



## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB–2020–0010]

[T.D. TTB–173; Ref: Notice No. 195]

RIN: 1513–AC71

### Establishment of the Virginia Peninsula Viticultural Area

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the 673,059-acre “Virginia Peninsula” viticultural area (AVA) in southeastern Virginia. The Virginia Peninsula viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

##### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations

for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

#### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an

AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### **Virginia Peninsula AVA Petition**

TTB received a petition from the Williamsburg Winery proposing the establishment of the “Virginia Peninsula” AVA in southeastern Virginia. The proposed AVA covers 673,059 acres and includes the counties of James City, York, New Kent, and Charles City, as well as the independent cities of

Poquoson, Hampton, Newport News, and Williamsburg. The proposed Virginia Peninsula is not located within any other AVA. At the time the petition was submitted, the proposed AVA contained five commercial vineyards covering a total of approximately 112 acres. The petition states that vineyard owners plan to plant an additional 61 acres of vineyards in the next few years. There are also five wineries within the proposed AVA. The petition identifies the distinguishing features of the proposed Virginia Peninsula AVA as its geology and climate.

The proposed Virginia Peninsula AVA, along with the regions to the north and south, is located on the Atlantic Coastal Plain, a region of low topographic relief with elevations ranging from sea level to approximately 250 feet. The York River, along with the Pamunkey River that feeds it, forms the northern boundary of the proposed AVA, and the James River forms the southern boundary. The Atlantic Coastal Plain is underlain by Cenozoic-era sand, mud, and gravel that were deposited during periods of higher sea levels. According to the petition, the geological formations of the proposed AVA are ideal for viticulture, as the bedrock tends to be fractured, allowing for greater root depth and greater rainfall permeability. To the east of the proposed AVA is the Atlantic Ocean. To the west of the proposed AVA are the Hopewell fault and the Atlantic Seaboard Fall Line, which mark the beginning of the Piedmont and Blue Ridge regions of Virginia. The geology of these regions to the west consists of igneous and metamorphic rock, including granite and gneiss. The bedrock is less porous and less fractured than the bedrock of the proposed AVA. As a result, neither grapevine roots nor rain can penetrate as deeply as within the more fractured bedrock of the proposed AVA.

The proposed Virginia Peninsula AVA is characterized by a humid subtropical climate, with long, humid summers and moderate to mild winters.

Average growing season temperatures within the proposed AVA range from an average low of 65 degrees Fahrenheit (F) to an average high of 84 degrees F. The average maximum high temperature is 100 degrees F, while the average minimum low temperature is 35 degrees F. The proposed AVA averages 57 days with temperatures over 90 degrees F and 2.6 days with temperatures over 100 degrees F. According to the petition, temperatures above 90 degrees F reduce photosynthesis in grapevines. Because photosynthesis is the process which produces sugar, reduced photosynthesis rates would require fruit to hang longer to achieve optimal sugar levels. The longer hang time increases the risk of disease or animals destroying a crop before it can be harvested.

The regions to the north and south of the proposed AVA have lower average growing season high temperatures, lower average growing season low temperatures, and lower average maximum high temperatures than the proposed AVA. Average minimum low growing season temperatures to the north are lower than within the proposed Virginia Peninsula AVA, while average minimum low growing season temperatures to the south are the same as within the proposed AVA. The regions to the north and south both have significantly fewer days with temperatures over 90 degrees F than the proposed AVA, and neither region has any days with temperatures over 100 degrees. The petition did not include temperature information for the region to the west of the proposed AVA.

According to the petition, the proposed Virginia Peninsula receives an average of 40.4 inches of rain a year, with an average of 7 inches occurring during the harvest season period of August 21 to November 8. During the harvest period, the proposed AVA has an average of 21 days with rain, and an average of 4.8 days with over ½ inch of rain. The average annual and growing season rainfall amounts of the proposed AVA are higher than the amounts for the

region to the north and less than the amounts for the region to the south. The proposed AVA also has more average harvest days with rain and more average harvest days with over ½ inch of rain than the region to the north, and fewer average harvest days with rain and fewer average harvest days with over ½ inch of rain than the region to the south. The petition did not include rainfall information from the region to the west of the proposed AVA. According to the petition, frequent rainfall during the harvest season, particularly daily amounts over ½ inch, can cause ripening fruits to split and can dilute flavors. The high growing season temperatures combined with frequent rainfall during the typical harvest season mean that vineyard managers within the proposed Virginia Peninsula AVA frequently face the decision whether to pick grapes before they've reached peak ripeness, or to let the fruit continue to ripen but potentially spoil.

### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 195 in the **Federal Register** on October 1, 2020 (85 FR 61895), proposing to establish the Virginia Peninsula AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 195. In Notice No. 195, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on November 30, 2020. TTB did not receive any comments in response to Notice No. 195.

## **TTB Determination**

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the establishment of the Virginia Peninsula AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the “Virginia Peninsula” AVA in southeastern Virginia, effective 30 days from the publication date of this document.

## **Boundary Description**

See the narrative description of the boundary of the Virginia Peninsula AVA in the regulatory text published at the end of this final rule.

## **Maps**

The petitioner provided the required maps, and they are listed below in the regulatory text. The Virginia Peninsula AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

## **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new

label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Virginia Peninsula AVA, its name, “Virginia Peninsula,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name “Virginia Peninsula” in a brand name, including a trademark, or in another label reference to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Virginia Peninsula AVA will not affect any existing AVA. The establishment of the Virginia Peninsula AVA will allow vintners to use “Virginia Peninsula” as an appellation of origin for wines made primarily from grapes grown within the Virginia Peninsula AVA if the wines meet the eligibility requirements for the appellation.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.



## **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

## **List of Subjects in 27 CFR Part 9**

Wine.

## **The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Add § 9.279 to subpart C to read as follows:

#### **§ 9.279 Virginia Peninsula AVA.**

(a) *Name.* The name of the viticultural area described in this section is “Virginia Peninsula”. For purposes of part 4 of this chapter, “Virginia Peninsula” is a term of viticultural significance.

(b) *Approved maps.* The 5 United States Geological Survey (USGS) 1:100,000 scale topographic maps used to determine the boundary of the Virginia Peninsula viticultural area are titled:

- (1) Norfolk, Virginia–North Carolina; 1985;
- (2) Petersburg, Virginia, 1984;
- (3) Richmond, Virginia, 1984;
- (4) Tappahannock, Virginia–Maryland; 1984; and
- (5) Williamsburg, Virginia, 1984.

(c) *Boundary.* The Virginia Peninsula viticultural area is located in James City, York, New Kent, and Charles City Counties, Virginia, as well as the independent Virginia cities of Poquoson, Hampton, Newport News, and Williamsburg. The boundary of the Virginia Peninsula viticultural area is as described below:

(1) The beginning point is on the Norfolk, Virginia–North Carolina map at the intersection of the Newport News City boundary and the James River Bridge. From the beginning point, proceed northwesterly along the Newport News City boundary to the point in the James River where the city boundary becomes concurrent with the James City County boundary; then

(2) Proceed northwesterly along the James City County boundary to the point where it becomes concurrent with the Charles City County boundary; then

(3) Proceed along the Charles City County boundary, crossing onto the Petersburg, Virginia, map and continuing along the Charles City County boundary to the point where it intersects the Henrico County boundary at Turkey Island Creek; then

(4) Proceed north-northeasterly along the concurrent Henrico County–Charles City County boundary to its intersection with the Chickahominy River, which is concurrent with the New Kent County boundary; then

(5) Proceed northwesterly along the Chickahominy River–New Kent County boundary, crossing onto the Richmond, Virginia, map to its intersection with the Hanover County boundary; then

(6) Proceed northeasterly along the Hanover County–New Kent County boundary to its intersection with the King William County boundary at the Pamunkey River; then

(7) Proceed southeasterly along the King William County–New Kent County boundary, crossing onto the Tappahannock, Virginia–Maryland map, to the intersection of the concurrent county boundary with the York River; then

(8) Proceed southeasterly along the York River, crossing onto the Williamsburg, Virginia map, to the intersection of the river with the Chesapeake Bay north of Tue Point; then

(9) Proceed southeast in a straight line to the shoreline of Marsh Point; then

(10) Proceed southeasterly, then southwesterly along the shoreline to the Hampton Roads Bridge-Tunnel; then

(11) Proceed southwest in a straight line, crossing onto the Norfolk, Virginia–North Carolina map, to the northeastern terminus of the Hampton City boundary; then

(12) Proceed southwesterly along the Hampton City boundary to the point where it intersects with the Newport News City boundary; then

(13) Proceed southwesterly, then northwesterly along the Newport News City boundary, returning to the beginning point.

Signed: June 9, 2021.

**Mary G. Ryan,**

*Administrator.*

Approved: June 11, 2021.

**Timothy E. Skud,**

*Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).*